

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
(WESTERN DIVISION)**

IN RE MERCY HEALTH ERISA LITIGATION

Civil Action No.: 1:16-cv-00441-SJD

**JOINT DECLARATION OF LAURA R. GERBER, MICHELLE C. YAU AND  
THOMAS R. THEADO IN SUPPORT OF PLAINTIFFS' MOTIONS FOR FINAL  
APPROVAL OF A CLASS ACTION SETTLEMENT AND FOR AWARD OF  
ATTORNEYS' FEES AND EXPENSES AND CASE CONTRIBUTION AWARDS**

**EXHIBIT A  
KELLER ROHRBACK, LLP FIRM RESUME**



# ERISA LITIGATION

# ABOUT KELLER ROHRBACK

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## Devoted to Justice

"[Keller Rohrback] has performed an important public service in this action and has done so efficiently and with integrity...[Keller Rohrback] has also worked creatively and diligently to obtain a settlement from WorldCom in the context of complex and difficult legal questions..." *In re WorldCom, Inc. ERISA Litigation*, No. 02-4816 (S.D.N.Y.) (Judge Cote).

**Keller Rohrback's lawyers excel by being prepared and persuasive.** It's a simple formula that combines our strengths: outstanding writing and courtroom skills, together with unparalleled passion and integrity. We have recovered billions of dollars for our clients, and have served as lead counsel in many prominent cases. Our lawyers are widely recognized as leaders in their fields who have dedicated their careers to combating corporate fraud and misconduct. We have the talent as well as the financial resources to litigate against Fortune 500 companies—and do so every day.

### Who We Are

Keller Rohrback's Complex Litigation Group has a national reputation as the go-to plaintiff's firm for large-scale, complex individual and class action cases. We represent employees and retirees, public and private investors, businesses, governments, and individuals in a wide range of actions, including fiduciary breach, securities fraud, manipulation, and other illegal practices relating to financial services and products, ERISA, antitrust, whistleblower, environmental, and product liability cases. Our approach is straightforward—we represent clients who have been harmed by conduct that is wrong, and we litigate with passion and integrity to obtain the best results possible. Every case is different, but we win for the same reason: we are persuasive. When you hire us, you hire smart, creative lawyers who are skilled in the courtroom and in negotiations.

Founded in 1919, Keller Rohrback's over 70 attorneys and 100 staff members are based in six offices across the country in Seattle, Oakland, Santa Barbara, Phoenix, New York, and Missoula. Over the past century, our firm has built a distinguished reputation by providing top-notch representation. We offer exceptional service and a comprehensive understanding of federal and state law nationwide. We also are well known for our abilities to collaborate with co-counsel to achieve outstanding results—essential skills in large-scale cases in which several firms represent plaintiffs. We pride ourselves on our reputation for working smartly with opposing counsel, and we are comfortable and experienced in coordinating high-stakes cases with simultaneous state and federal government investigations.

We have won verdicts in state and federal courts throughout the nation and have obtained judgments and settlements on behalf of clients in excess of \$23.25 billion. Courts around the country have praised our work, and we are regularly appointed lead counsel in nationally prominent class action cases. Our work has had far-reaching impacts for our clients in a variety of settings and industries, creating a better, more accountable society.





# EMPLOYEE BENEFITS

## ATTORNEYS

Lynn Lincoln Sarko  
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**Keller Rohrback L.L.P. is a pioneer in litigation under the Employee Retirement Income Security Act of 1974 (ERISA), recovering to date over two billion dollars of retirement and other benefits for our clients.** And this is not merely a matter of money, as important as that is. Keller Rohrback's lawyers have worked tirelessly to shape ERISA law, so that the statute protects the interests of participants and beneficiaries, rather than their employers and service providers. We have seen time and again fiduciaries attempt to use ERISA to thwart participants' interests, whether in the design of 401(k) plans, the structuring of Employee Stock Ownership Plans (ESOPs), the investments in defined benefit plans, or the attempt to read ERISA's exceptions broadly to favor the employers' and service providers' interests, not the participants' interests. We have successfully opposed all these efforts in scores of cases.

Keller Rohrback attorneys have done this since the statute was enacted in 1974. In that year, David Preminger, of our New York office, wrote two of the first scholarly articles on ERISA. Jeff Lewis, across the country and now in our Oakland office, began practice the year after ERISA was adopted and has been representing plaintiffs in pension and other benefit matters ever since. He served for many years as the co-chair of the Board of Senior Editors of Employee Benefits Law, the major ERISA practitioner's treatise, used daily by benefits lawyers throughout the country. David and Jeff are only two of our ERISA lawyers, albeit the most senior. We have a very deep bench in ERISA matters. Lawyers at Keller Rohrback have testified before Congress, served as editors of numerous employee benefits books and manuals, and written scholarly ERISA articles, amicus briefs, and comments to regulatory agencies overseeing ERISA plans. We frequently are invited to make presentations at national legal education seminars regarding employee benefit class actions and ERISA. We have also served as fiduciaries and mediators.

We are involved in all aspects of ERISA litigation, from administrative reviews to district court trials to circuit court appeals to handling cases and filing amicus briefs in the U.S. Supreme Court. We are proud of our history, but we don't rest on our laurels, we listen carefully to employees' stories and craft cases that enforce ERISA's longstanding duties—which are the highest known to the law.

Attorneys at Keller Rohrback have pioneered application of ERISA to the evolving manifestations of waste and abuse affecting retirement savings nationwide. For example, Gary Gotto and Ron Kilgard brought the first successful defined contribution company stock case, *Whetman v. IKON Office Solutions*, spawning an entire area of litigation that resulted in billions of dollars being recovered around the country for employees and their retirement plans. Keller Rohrback's Managing Partner and Complex Litigation Group Leader, Lynn Sarko, along with Derek Loeser, Erin Riley, and many others, pushed this area of the law forward with the *WorldCom* and *Enron* ERISA class actions—the latter of which resulted in the largest settlement in such a case, at over \$264 million. More recently, we have led the charge with private ESOP, church plan, and our 401k plan cases challenging excessive and conflicted fees. We have even represented public employees in successfully striking down as unconstitutional cut-backs to their retirement benefits.

# EMPLOYEE BENEFITS

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Keller Rohrback is routinely appointed lead or co-lead counsel in major employee benefit class actions. Our work in this complex and rapidly developing area has been praised by our clients, our co-counsel, and federal courts throughout the country. Keller Rohrback has excelled in managing complex employee benefits cases by developing a deep understanding of employee benefits law and by drawing on our attorneys' experience in numerous related practice areas, including securities, accounting, corporate, insurance coverage, bankruptcy, financial institution regulation, mergers and acquisitions, contracts, employment law, executive compensation, professional malpractice, constitutional law, and class action law.

We are proud to represent employees in connection with their retirement and other benefits. The following pages summarize the breadth of our expertise and experience in these areas.







# EMPLOYEE BENEFITS

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## PENSION PLANS

Congress enacted ERISA in light of several highly publicized failures of private pension plans which left long-term employees at the end of their careers without their promised benefits. ERISA “seek[s] to ensure that employees will not be left empty-handed once employers have guaranteed them certain benefits.” *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). Attorneys at Keller Rohrbach have filed numerous cases on behalf of ERISA plan participants in order to make sure that the fiduciaries manage the plans’ assets prudently and that pensioners and their beneficiaries receive the benefits that they were promised. Keller Rohrbach further supports ERISA pension plan participants and beneficiaries through writing amicus briefs related to pension issues. *E.g.*, Brief for The Pension Rights Center as Amicus Curiae in Support of Respondent, *Spokeo, Inc. v. Robins*, No. 13-1339 (U.S.); Brief for the Pension Rights Center as Amicus Curiae in Support of Petitioner, *Pundt v. Verizon Communications, Inc.*, No. 15-785 (U.S.).



## REPRESENTATIVE CASES

### *Mertens v. Kaiser Steel Retirement Plan*, 829 F. Supp. 1158 (N.D. Cal.)

A firm attorney served as co-counsel for a putative class of retirees of Kaiser Steel whose benefits were drastically reduced when the plan was terminated in an underfunded position. Plaintiff alleged that following an outside takeover of Kaiser, the company systematically underfunded the company’s pension plan so that the new owners could instead take profits from the company. The lawsuit also alleged that the Kaiser retirement plan’s actuaries also contributed to the underfunding by committing malpractice. The court held that the malpractice claims against the actuaries were not preempted by ERISA. The case ultimately settled, resulting in the payments of millions of dollars to the class members.

### *Canseco v. Construction Laborers Pension Trust*, 93 F.3d 600 (9th Cir.)

A firm attorney served as co-counsel for a class of pension plan retirees in a case challenging the plan’s failure to pay retroactive benefits to retirees who were eligible for full benefits under the plan, but did not immediately apply for their benefits. The U.S. court of appeals’ opinion reversed the district court’s judgment for defendants and resulted in the payment of millions of dollars in retroactive benefits to class members. The case also established the principle that it is an abuse of discretion for a plan fiduciary to interpret a plan contrary to its plain meaning.

### *McDaniel v. National Shopmen Pension Fund*, 889 F.2d 804 (9th Cir.)

A firm attorney served as co-counsel for a class of pension plan participants in a case challenging the plan’s reduction in vested benefits based on the fact that their employer had withdrawn from the plan. The Ninth Circuit held that the reduction was improper and benefits were restored to the participants.

### *Kayes v. Pacific Lumber Co.*, 51 F.3d 1449 (9th Cir.)

A firm attorney served as co-counsel for a class of retirees and employees of Pacific Lumber Co. The complaint alleged that defendants’ selection of Executive Life Insurance Company to provide annuities to pension plan participants (upon termination of the plan) violated ERISA’s fiduciary standards. The Ninth Circuit decision upheld plaintiffs’ standing to pursue the claims, affirmed the lower court finding that defendant corporate officers were fiduciaries, and broadly defined term “plan asset” for purposes of ERISA’s prohibited transaction provisions. On remand, the case settled, resulting in the payment of approximately \$7 million to the class.

# EMPLOYEE BENEFITS

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## PENSION PLANS

### *Cleary v. Retirement Plan for Employees of Northern Montana Hospital, No. 16-00061 (D. Mont.)*

Keller Rohrback brought this class action on behalf of the participants in, and/or beneficiaries of, the Retirement Plan for Employees of Northern Montana Hospital. The complaint alleges that the members of these classes have been, or will be denied, certain retirement benefits to which they are entitled under the terms of the Plan and/or ERISA with respect to vesting and accrual of benefits. The complaint also alleges that Defendants failed to comply with ERISA's rules for claims procedures. A settlement on behalf of 175 people whose benefits were miscalculated and injunctive relief concerning claims procedures and recordkeeping has been preliminary approved. The Final Approval Hearing is scheduled for November 7, 2018.

### *Judy Hunter v. Berkshire Hathaway, Inc., No. 14-663 (N.D. Tex.)*

Keller Rohrback serves as co-counsel in this class action filed on behalf of the participants and beneficiaries of two ERISA plans: a pension plan and a 401(k) plan. The complaint alleges that the corporate parent company caused its subsidiary to reduce future benefits despite explicit plan language prohibiting that action. The trial court initially granted Berkshire Hathaway's motion to dismiss, but on appeal Keller Rohrback persuaded the United States Court of Appeals for the Fifth Circuit to reverse and remand. The case is currently headed towards trial.

### *Fletcher v. ConvergeX, No. 13-9150 (S.D.N.Y.)*

Keller Rohrback serves as co-counsel in this lawsuit filed in the Southern District of New York that alleges Defendants violated ERISA by "double-charging" for transition management and brokerage services. Defendants funneled trade orders to an offshore subsidiary broker located in Bermuda, which created a "spread" between the actual price and the reported price by adding mark-ups/mark downs. While the reported price was confirmed with customers, the actual prices were undisclosed and unauthorized additional compensation. After the trial court dismissed the case, the United States Court of Appeals for the Second Circuit reversed and reinstated plaintiffs' claims. The case is back in front of the district court.

### *Monper v. Boeing, No. 13-1569 (W.D. Wash.)*

Keller Rohrback served as Counsel in this lawsuit that alleged Defendants violated ERISA by misrepresenting to plaintiffs that their pension benefit accruals would not change if they transferred their work locations from California to Washington.

### *In re Bakery & Confectionery Union & Industry Int'l Pension Fund Pension Plan, No. 11-1471 (S.D.N.Y.)*

Keller Rohrback and co-counsel filed this action alleging that an amendment to the Bakery & Confectionery Union & Industrial Pension Fund Pension Plan violated ERISA's anti-cutback provisions. Plaintiffs prevailed at both the district court and appellate levels, and Defendants implemented adjustments to reinstate the benefits due to eligible employees.

### *Palmason v. Weyerhaeuser, No. 11-695 (W.D. Wash.)*

Keller Rohrback and co-counsel filed this action alleging that Weyerhaeuser and other fiduciaries caused its pension plan to engage in a risky investment strategy involving alternative investments and derivatives, causing the Plans' master trust to become underfunded. A settlement was reached for injunctive relief on behalf of the Plans' participants and beneficiaries.

### *Buus v. WaMu Pension Plan, No. 07-903 (W.D. Wash.)*

Keller Rohrback served as Lead Counsel in this class action on behalf of participants and beneficiaries of Washington Mutual's defined benefit pension plan whose benefit accrual was frozen under the existing pension formula and replaced with a new "cash balance plan" accrual system that reduced the rate of future benefit accrual. In conjunction with Washington Mutual's bankruptcy proceedings, a settlement of \$20 million was approved.

# EMPLOYEE BENEFITS



## PENSION PLANS: CHURCH PLANS

**For certain employees participating in pension plans, ERISA does not apply.** If a plan is not subject to ERISA, there is no federal law requiring a sponsor to keep funding the plan or requiring participants to get timely and accurate information about the plan, and there is no pension benefit insurance through the Pension Benefit Guaranty Corporation (PBGC). One of the few kinds of plans exempt from ERISA is the “church plan.” For years, Keller Rohrback has been representing employees in federal lawsuits against large healthcare companies that claim their pension plans are “church plans.” The employees in the plans all work for large healthcare organizations, hospital systems, and their affiliates. These healthcare organizations are non-profit corporations, but they often have assets on par with Fortune 100 companies. The lawsuits ask the courts to determine that these pension plans are not “church plans” at all, force the employers to properly fund the plans, and give their employees the safety and security of ERISA protections.



## REPRESENTATIVE CASES

### *Griffith v. Providence Health & Services*, No. 14-01720 (W.D. Wash.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that the Providence Health & Services Cash Balance Retirement Plan was improperly claiming an exemption from ERISA as a “church plan.” In 2017, the Court granted final approval of a class settlement of \$350 million to the Plan and a guarantee that the Plan’s trust will have sufficient assets to pay benefits as they come due; and additional administrative protections and other equitable relief for Plan participants.

### *Hodges v. Bon Secours Health System, Inc.*, No. 16-01079 (D. Md.)

Keller Rohrback served as co-counsel in this lawsuit alleging that Bon Secours Health System’s seven defined benefit pension plans were improperly claiming an exemption from ERISA as “church plan(s).” In 2017, the Court granted final approval of a settlement providing for equitable relief, plus payment of over \$98 million to the Plans.

### *Lann v. Trinity Health Corporation*, No. 14-02237 (D. Md.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that Trinity Health Corporation and Catholic Health East were improperly claiming an exemption from ERISA as “church plan.” In 2017, the Court granted final approval of a settlement providing for equitable relief, plus payment of over \$76 million to the Plan.

### *Garbaccio v. St. Joseph’s Hospital & Medical Center & Subsidiaries*, No. 16-02740 (D.N.J.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that the St. Joseph’s Hospital and Medical Center Plan was improperly claiming an exemption from ERISA as a “church plan.” On March 6, 2018, the Court granted final approval of a settlement providing for equitable relief, plus payment of over \$42.5 million to the Plan.



# EMPLOYEE BENEFITS

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## **PENSION PLANS: CHURCH PLANS**

### *In re Wheaton Franciscan ERISA Litigation*, No. 16-04232 (N.D. Ill.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that the Wheaton Franciscan System Retirement Plan was improperly claiming an exemption from ERISA as a “church plan.” On January 16, 2018, the Court granted final approval of a settlement providing for equitable relief, plus a guarantee payment of the first \$29.5 million of benefits that are distributable from the Plan to Class Members in the event trust assets attributable to the Plan become insufficient to pay such benefits.

### *Carver v. Presence Health Network*, No. 15-02905 (N.D. Ill.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that Defendants improperly claimed an exemption from ERISA as a “church plan.” On July 10, 2018, the Court granted final approval of a settlement providing for equitable relief, plus a guarantee of payment of the first \$20 million of benefits that are distributable from the Plans’ trusts to Settlement Class members if either of the Plans is unable to pay such benefits.

### *Stapleton v. Advocate Health Care Network*, No. 14-01873 (N.D. Ill.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that Defendants improperly claimed an exemption from ERISA as a “church plan” for the Advocate Health Care Network Pension Plan. On June 27, 2018, the Court granted final approval of a settlement providing for equitable relief, plus a guarantee that the Plan trust will have sufficient funds to pay the level of accrued benefits stated in the Plan for the period of ten (10) years.

### *In re Mercy Health ERISA Litigation*, No. 16-00441 (S.D. Ohio)

Keller Rohrback served as counsel in this lawsuit alleging that Defendants improperly claimed an exemption from ERISA as a “church plan” for the Mercy Pension Plans. On August 8, 2018, the Court granted preliminary approval of a settlement providing for equitable relief, a guarantee that the Plans’ trusts will have sufficient funds to pay benefits for a period of nine (9) years, and a payment to certain settlement class members who took lump sum distributions.

### *Holcomb v. Hospital Sisters Health System*, No. 16-03282 (C.D. Ill.)

Keller Rohrback served as Co-Lead Counsel in this lawsuit alleging that Defendants improperly claimed an exemption from ERISA as a “church plan” for the Hospital Sisters’ Pension Plan. On June 8, 2018, Plaintiffs filed a motion for preliminary approval of a settlement providing for equitable relief, plus a guarantee of funding accrued benefits through fiscal year 2022, or as such time as \$62.5 million has been contributed to the Plan.

## **OTHER CURRENT CHURCH PLAN CASES**

*Rollins v. Dignity Health*, No. 13-01450 (N.D. Cal.)

*Kaplan v. Saint Peter’s Healthcare, System*, No. 13-02941 (D.N.J.)

*Owens v. Saint Anthony Medical Center, Inc.*, No. 14-04068 (N.D. Ill.)

*Cappello v. Franciscan Alliance, Inc.*, No. 16-00290 (N.D. Ind.)

*Feather v. SSM Health*, No. 16-00393 (S.D. Ill.)

*Smith v. OSF Healthcare System*, No. 16-00467 (S.D. Ill.)

*Sanzone v. Mercy Health*, No. 16-00923 (E.D. Mo.)

# EMPLOYEE BENEFITS

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## 401(K) & SAVINGS PLANS: COMPANY STOCK & PUBLIC ESOPs

### **ERISA sets minimum standards for the management of employer-sponsored retirement and health benefit plans.**

Workers and retirees across America depend on their company-sponsored benefit plans to provide them with health insurance and financial security after retirement. Keller Rohrback is a pioneer in ensuring that ERISA's fiduciary duties of prudence and loyalty apply to all plan investment options, including company stock. Ensuring fiduciary responsibility over company stock funds is of paramount importance, given that an employee's livelihood is also tied to the well-being of their employer—thus, if an employer's stock collapses, employees can lose their jobs at the same time that their retirement savings is decimated.

Keller Rohrback's work in this area resulted in numerous pivotal judicial opinions. *E.g.*, *In re WorldCom, Inc.*, 263 F. Supp. 2d 745 (S.D.N.Y.); *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, 284 F. Supp. 2d 511 (S.D. Tex.); and *In re Syncor ERISA Litig.*, 516 F.3d 1095 (9th Cir.). Additionally, Keller Rohrback has further supported this area of law through presentations at ERISA conferences, as well as amicus briefs. *E.g.*, Brief for Law Professors as Amici Curiae in Support of the Respondents, *Fifth Third Bancorp v. Dudenhoeffer*, No. 12-751 (U.S.).

## REPRESENTATIVE CASES

### *Whetman v. IKON Office Solutions, Inc.*, MDL No. 1318 (E.D. Pa.).

The wave of 401(k) company stock cases began with *Whetman v. IKON Office Solutions, Inc.* In a first-of-its-kind complaint, we alleged that company stock was an imprudent investment for the plan, that the fiduciaries of the plan failed to provide complete and accurate information concerning company stock to the participants, and that they failed to address their conflicts of interest. This case resulted in ground-breaking opinions in the ERISA 401(k) area of law on motions to dismiss, class certification, approval of securities settlements with a carve-out for ERISA claims, and approval of ERISA settlements providing a total recovery to the Plans of \$111 million.

### *In re Enron Corp. ERISA Litigation*, MDL No. 02-1446 (S.D. Tex.)

Keller Rohrback served as Co-Lead Counsel in this class action. After groundbreaking motions to dismiss decisions, and several years of discovery, Keller Rohrback negotiated five separate settlements with different groups of defendants, resulting in recoveries of over \$264 million for the class.

### *In re WorldCom, Inc. ERISA Litigation*, No. 02-4816 (S.D.N.Y.)

Keller Rohrback served as Lead Counsel and one of the firm's attorneys served as ERISA counsel in this class action on behalf of participants and beneficiaries of the WorldCom 401(k) Salary Savings Plan who invested in WorldCom stock. Settlements providing for injunctive relief and payments of over \$48 million to the plan were approved by Judge Denise Cote.

### *In re Lucent Technologies, Inc. ERISA Litigation*, No. 01-3491 (D.N.J.)

Keller Rohrback served as Co-Lead Counsel in this class action brought on behalf of participants and beneficiaries of the Lucent defined contribution plans who invested in Lucent stock. A settlement providing injunctive relief and the payment of \$69 million to the plan was approved by Judge Joel Pisano.

# EMPLOYEE BENEFITS

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## ***401(K) & SAVINGS PLANS: COMPANY STOCK & PUBLIC ESOPs***

### *In re AIG ERISA Litigation, No. 04-09387 (S.D.N.Y.) and In re AIG ERISA Litigation II, No. 08-05722 (S.D.N.Y.)*

Keller Rohrback served as Co-Lead Counsel in these two class actions on behalf of participants and beneficiaries of the AIG 401(k) retirement plans who invested in AIG stock. A settlement providing for the payment of \$25 million to the plans was approved by Judge Kevin T. Duffy in *AIG I*, and a settlement providing for the payment of \$40 million to the plans was approved by Judge Laura Swain in *AIG II*.

### *In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation, No. 07-10268 (S.D.N.Y.)*

Keller Rohrback served as Co-Lead Counsel in this class action on behalf of participants and beneficiaries of Merrill Lynch's defined contribution plans who invested in Merrill Lynch stock. A settlement providing injunctive relief and a payment of \$75 million to the plans was approved by Judge Jed S. Rakoff.

### *Alvidres v. Countrywide Financial Corp., No. 07-5810 (C.D. Cal.)*

Keller Rohrback served as Lead Counsel in this class action on behalf of participants and beneficiaries of the Countrywide 401(k) plan who invested in Countrywide stock. A settlement providing for injunctive relief and the payment of \$55 million to the plan was approved by Judge John F. Walter.

### *In re Washington Mutual, Inc. ERISA Litigation, No. 07-1874 (W.D. Wash.)*

Keller Rohrback served as Co-Lead Counsel in this ERISA breach of fiduciary duty class action brought on behalf of participants and beneficiaries in the company's retirement plans who invested in Washington Mutual stock. Judge Marsha J. Pechman granted final approval of a \$49 million settlement in the ERISA action.

### *In re Global Crossing, Ltd. ERISA Litigation, No. 02-7453 (S.D.N.Y.)*

Keller Rohrback served as Co-Lead Counsel in this class action on behalf of participants and beneficiaries of the Global Crossing defined contribution plans who invested in Global Crossing stock. A settlement providing injunctive relief and a payment of \$79 million to the plan was approved by Judge Gerard Lynch.



# EMPLOYEE BENEFITS

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## **401(K) & SAVINGS PLANS: PRIVATE ESOPs**

**An ESOP is a tax-qualified defined contribution employee benefit plan governed by ERISA.** ESOPs are intended to invest primarily in the stock of the ESOP participant's employer. Keller Rohrback is a national leader in ESOP cases, and has substantial experience representing ESOPs in breach of fiduciary actions against trustees who approve or permit transactions that favor corporate interests to the detriment of the ESOP despite having a fiduciary duty to act in the ESOP's best interests. Keller Rohrback's attorneys have achieved many notable successes for their ESOP clients, including obtaining seven-figure judgments at trial, and recovering millions of dollars in settlements.

## **REPRESENTATIVE CASES**

### *Schwartz v. Cook*, No. 15-3347 (N.D. Cal.)

Keller Rohrback represented a participant in the Buckles-Smith Electric Company ESOP in this lawsuit that alleged that the ESOP's fiduciaries caused Buckles-Smith to redeem the ESOP's shares in that company for less than they were worth, thereby benefitting the remaining shareholders (including the ESOP's fiduciaries) at the expense of the ESOP. The case settled and final approval was granted on June 15, 2017.

### *Rader v. Bruister*, No. 13-1081 (S.D. Miss.)

This case alleged breach of fiduciary duty and prohibited transactions in connection with the purchase by the Bruister Company ESOP of shares from its founder. We obtained a judgment for approximately \$6.5 million after a lengthy bench trial. Defendants appealed the judgment, and the Fifth Circuit affirmed. The Fifth Circuit also affirmed the award of attorneys' fees.

### *Wagner v. Stiefel Labs., Inc.*, No. 12-3234 (N.D. Ga.)

Keller Rohrback served as counsel for several ESOP plan participants in this lawsuit that alleged Defendants directed and approved the repurchase of Stiefel Labs., Inc. stock from ESOP participants and the ESOP at a fraction of the actual fair market value of Stiefel stock, allowing Defendants to reap a substantially higher portion of the proceeds in a subsequent \$3.6 billion sale of the company to GlaxoSmithKline. The case was resolved pursuant to a confidential settlement prior to trial.

### *Wool v. Sitrick*, No. 10-2741 (C.D. Cal.)

Keller Rohrback served as Lead Counsel in this ESOP valuation action brought on behalf of participants and beneficiaries in the company's ESOP against Defendants who repurchased shares from the ESOP at a price significantly below fair market value. A settlement providing a payment \$6.25 million settlement was approved by Judge Jacqueline Nguyen.

### *Johnson v. Couturier*, No. 05-2046 (E.D. Cal.)

Keller Rohrback obtained a major victory for participants of the Noll Manufacturing Co. ESOP against Defendants who awarded themselves grossly excessive compensation at the expense of the ESOP. In a seminal case frequently cited in ESOP litigation by courts across the country, the Ninth Circuit affirmed a preliminary injunction by the district court which prohibited an ESOP plan sponsor from paying litigation costs to indemnify the ESOP's trustees. *Johnson v. Couturier*, 572 F.3d 1067 (9th Cir.).

### *Hans v. Tharaldson*, No. 05-115 (D.N.D.)

Keller Rohrback served as Lead Counsel for the then-current employees in an ESOP valuation action that alleged the ESOP paid an excessive price for their shares in a transaction approved by Defendants. A settlement providing for a \$15 million settlement fund, including a \$4 million cash payment to all current and former participants and beneficiaries of the ESOP, and an \$11 million credit against the principal owed by the ESOP to the company was approved by Chief Judge Ralph Erikson.

# EMPLOYEE BENEFITS



## 401(K) & SAVINGS PLANS: EXCESSIVE & IMPROPER FEES

**Precious retirement savings—particularly in defined contribution or 401(k) plans—are vulnerable to being whittled away by fees associated with investment products.** There are as many types of fees as investment products available to retirement plans. Many fees are hidden or undisclosed. Some fees are paid directly by participants, while others are levied indirectly as kickbacks from one service provider or fiduciary to another. In many cases, these fees are charged for improper purposes—to enrich plan fiduciaries or service providers at the expense of hard-working Americans. High fees over time can slash retiree balances by a third, or more. No matter who pays or collects excessive fees or conflicted fees, ERISA provides robust protections and remedies. Specifically, ERISA prohibits fiduciaries from self-dealing and any conduct that puts their own interests—or the interests of their affiliates or third parties—above those of the plan participants to whom they owe fiduciary duties.



Keller Rohrback has successfully litigated ERISA class actions challenging excessive and conflicted fees. Our attorneys have challenged investments that contain many layers of securities and insurance products—and many layers of fees. We have pursued on a class action basis not only claims against multiple entities responsible for the fees charged to participants in a single plan, but also uniform fees charged by service providers to thousands of plans using common investment products.

Keller Rohrback has been selected by federal courts to serve as lead or co-lead counsel in class action cases challenging excessive and self-dealing fees. We have written articles and presented on these topics, and we authored an amicus brief in the first ERISA excessive fee case to reach the U.S. Supreme Court. See Brief for Law Professors as Amici Curiae in Support of the Petitioners, *Tibble, et al. v. Edison International, et al.*, No. 13-550 (U.S.).

## REPRESENTATIVE CASES

### *Braden v. Wal-Mart Stores, Inc.*, No. 08-3109 (W.D. Mo.)

Keller Rohrback served as Lead Counsel in this class action on behalf of participants and beneficiaries of Wal-Mart's 401(k) plan who invested in retail class mutual funds that charged excessive fees to participants and paid hidden fees to the plan's trustee and recordkeeper, Merrill Lynch. The complaint alleged that the revenue sharing and the other fees were excessive in light of the size of the plan, and that these fees were not properly disclosed. Keller Rohrback's attorneys secured the *first appellate victory* in a fee case of this kind when they obtained an order from the Eighth Circuit reversing dismissal and articulating the pleading standard for process-based breaches of ERISA, see *Braden v. Wal-Mart*, 588 F.3d 585 (2009). A settlement that included \$13.5 million along with injunctive relief was approved by Judge Gary A. Fenner.



# EMPLOYEE BENEFITS

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## ***401(K) & SAVINGS PLANS: EXCESSIVE & IMPROPER FEES***

### *Beach v. JPMorgan Chase Bank, No. 17-563 (S.D.N.Y.)*

Plaintiffs allege that JPMorgan Chase Bank (Chase) breached its fiduciary duties to the participants and beneficiaries of the JPMorgan Chase 401(k) Savings Plan (Plan) in violation of ERISA by, among other things, failing to prudently and loyally manage the Plan's assets by selecting and retaining unduly expensive Core Funds and Target Date Funds as investment options in the Plan and by engaging in prohibited transactions as a result of conflicts of interest. Defendants' motion to dismiss was largely denied. The case is now in the discovery phase.

### *In re Regions Morgan Keegan ERISA Litigation, No. 08-2192 (W.D. Tenn.)*

Keller Rohrback served as Co-Lead Class Counsel in this ERISA breach of fiduciary duty class action on behalf of participants and beneficiaries in the company's retirement plans as well as customer plans for which Regions served as a fiduciary. A settlement providing injunctive relief and a payment of \$22.7 million was approved by Judge Samuel H. Mays, Jr.

# EMPLOYEE BENEFITS

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## ***401(K) & SAVINGS PLANS: IMPRUDENT INVESTMENTS***

**Many times ERISA plans end up in high-risk or other patently imprudent investments due to breaches by the plans' fiduciaries.** Depending on the structure of the investment, fiduciaries may have been incentivized by the fees that could be generated to invest plan assets in investments that are simply unacceptably risky for ERISA plans. Keller Rohrback has successfully litigated and resolved numerous cases challenging fiduciaries' imprudent investment of plan assets in high risk investment strategies.

## **REPRESENTATIVE CASES**

### *Madoff Direct & Feeder Fund Litigation: Hartman v. Ivy Asset Management LLC, No. 09-8278 (S.D.N.Y.)*

Keller Rohrback successfully litigated this direct action on behalf of the trustees of seventeen employee benefit plans damaged by the Madoff Ponzi scheme. The action alleged that Ivy Asset Management and J.P. Jeanneret Associates, Inc. breached their fiduciary duties under ERISA by causing the plans to be invested directly or indirectly in Madoff funds. Keller Rohrback obtained a settlement of over \$219 million in this case and related actions, including claims brought by the United States Secretary of Labor and the New York Attorney General.

### *In re State Street Bank and Trust Co. ERISA Litigation, No. 07-08488 (S.D.N.Y.)*

Keller Rohrback served as Co-Lead Counsel in this ERISA case brought on behalf of participants and beneficiaries in a class of retirement plans that had invested in State Street's fixed income bond funds. Plaintiffs alleged that State Street, investment manager of the bond funds, had imprudently invested the purportedly conservative funds in high-risk and/or highly leveraged financial instruments tied to mortgage-backed securities. A settlement providing a payment of \$89.75 million was approved by Judge Richard J. Holwell.

# EMPLOYEE BENEFITS

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## **401(K) & SAVINGS PLANS: FOREIGN CURRENCY TRADING**

**Foreign exchange is a necessary component of all international investment transactions, yet the foreign exchange market is one of the least transparent and least regulated of the international markets.** The large banks and other financial institutions that make up this market act as market-makers and trade currencies amongst each other in this \$5.3 trillion-a-day market. The lack of regulation in the marketplace makes it easy for the banks to manipulate transactions and the rates at which they are effected to the banks' advantage—at the expense of their clients. Keller Rohrback's practice has encompassed a range of foreign exchange trading abuses faced by both institutional investors and participants and beneficiaries of retirement plans.

## **REPRESENTATIVE CASES**

*Farrell v. JPMorgan Chase & Co.*, No. 16-2627 (S.D.N.Y.) / *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-7789 (S.D.N.Y.)

The complaint alleges that JPMorgan Chase, who sponsored collective investment trusts or provided asset management in connection with foreign investments requiring securities exchange, engaged in a world-wide foreign currency manipulation scheme spanning a decade. The complaint also alleges that JPMorgan is therefore a fiduciary to hundreds of ERISA plans affected by this scheme. The multi-bank scheme is subject to antitrust and commodities act claims as well. Numerous banks, including JPMorgan, have settled the related price-fixing case for over \$2 billion thus far. Keller Rohrback is currently serving as ERISA Allocation Counsel with regard to these partial settlements.

*Andover Cos. Emp. Savings & Profit Sharing Plan v. State Street Bank & Trust Co.*, No. 12-11698 (D. Mass.)

This complaint was filed on behalf of a class of all qualified ERISA plans, and their participants, beneficiaries, and named fiduciaries, who suffered losses as a result of State Street Bank and Trust Company's alleged deceptive acts and practices concerning hidden charges for foreign currency exchange transactions between 1998 and 2009. Plaintiffs allege that State Street improperly marked up or marked down currency transactions, and engaged in ERISA prohibited transactions when it failed to disclose fully the details of the foreign currency transactions it was undertaking on behalf of the Plans. A settlement of \$300 million was approved on behalf of the consumer claims and the ERISA claims by Judge Mark L. Wolf.

*Bank of New York Mellon Corp. Forex Transactions Litigation*, No. 12-2335 (S.D.N.Y.)

Keller Rohrback served as counsel in this foreign currency exchange transaction class action, representing qualified ERISA participants and beneficiaries on behalf of their respective plans. Judge Lewis A. Kaplan granted final approval of a global resolution of the private and governmental enforcement actions against BNY Mellon in which \$504 million will be paid back to BNY Mellon customers (and \$335 million of which is directly attributable to the class litigation).

# EMPLOYEE BENEFITS

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## WELFARE PLANS

In addition to retirement plans, ERISA also governs how employee health care plans are administered. ERISA creates fiduciary responsibilities for those who manage and control health plans, requires that plans provide participants with accurate plan information, and gives plan participants the right to sue for benefits and breaches of fiduciary duty. Therefore, health care plans must be operated in compliance with ERISA's particular standards that were designed to protect the interests of employees, retirees, and other plan beneficiaries, such as family members.

## REPRESENTATIVE CASES

### *Dobson v. Hartford Financial Services Group, Inc.*, 389 F. 3d 386 (2d Cir.)

A firm attorney served as co-counsel for a putative class of participants in ERISA-covered long-term disability plans challenging Hartford's failure to pay interest on retroactive payments it made to disabled participants after those participants were successful in using the plan's internal review procedure and obtaining reversals of claim denials. The district court granted the named plaintiff's claims on one of his legal theories, but denied class certification and rejected other claims. The court of appeals reversed in these latter respects. After remand and further proceedings in both the district and appeals court, the case settled. The settlement provided for future payment of interest on claims where appeals were favorably decided and for some retroactive payments.

### *In re Express Scripts / Anthem ERISA Litigation*, No. 16-3399 (S.D.N.Y.)

Keller Rohrback serves as interim Co-Lead Counsel in this class action filed on behalf of both plan fiduciaries and all participants and beneficiaries of Anthem-insured ERISA plans and self-insured ERISA plans against both Anthem and Express Scripts, Inc. (ESI) for breaches of fiduciary duty and prohibited transactions under ERISA. ESI serves as the exclusive Pharmacy Benefit Manager (PBM) to Anthem-insured and -administered plans under a ten-year agreement, and the claims arise out of Defendants' practice of overcharging the class for pharmaceutical drugs. The case is pending before the Second Circuit Court of Appeals.

### *In re Cigna Corp. PBM Litigation*, No. 16-1702 (D. Conn.)

Keller Rohrback serves on the Plaintiffs' Executive Committee in this ERISA and RICO case against Cigna, its affiliates, and its primary external Pharmacy Benefit Manager (PBM) OptumRx. Plaintiffs here allege that Cigna and its PBMs engage in a "Clawback Scheme" where patients are overcharged for their prescription medications above and beyond the negotiated price of the drug or the retail cash price of the drug charged to someone without health insurance, while Defendants keep the overcharges. Plaintiffs prevailed in large part on Defendants' motion to dismiss in an order issued in March 2018.

# EMPLOYEE BENEFITS

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## **WELFARE PLANS**

### *Gates v. United Health, No. 11-3487 (S.D.N.Y.)*

Keller Rohrback served as counsel in this lawsuit that alleged Defendants violated ERISA through use of an “estimating policy” which caused Medicare eligible participants and beneficiaries to be paid lower benefits than required by the plan in which they participate for services provided by out-of-network providers. Following an initial dismissal, Keller Rohrback successfully appealed to the Second Circuit Court of Appeals, and the district court then agreed with Plaintiff.

### *Turpin v. Consolidated Coal Company, No. 99-1886 (W.D. Pa.)*

A firm attorney served as co-counsel for plaintiff in a case alleging that a Blue Cross entity's use of computer-generated Explanation of Benefits (EOB) forms violated ERISA regulations guaranteeing plan participants a full and fair review of their claims. The class action settlement resulted in significant changes to the forms, including detailed information as to how participants could appeal claim denials and reform of the forms' denial codes so that they were more understandable to the class members.



# ERISA APPELLATE PRACTICE

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**ERISA appeals require specialized skills and experience, and Keller Rohrback has a seasoned appellate team that includes award-winning brief writers and outstanding oral advocates.** Our ERISA appellate expertise is particularly important in large cases, including complex class actions. Keller Rohrback has the experience and talent to handle any issue that arises involving interlocutory appeals and will work to ensure that any judgment or settlement is affirmed on appeal.

## REPRESENTATIVE CASES

### *Fletcher v. ConvergeX Group, L.L.C.*, No. 13-9150, 2017 WL 549025 (2d Cir.)

Keller Rohrback serves as co-counsel in this lawsuit filed in the Southern District of New York that alleges Defendants violated ERISA by “double-charging” for transition management and brokerage services. After the trial court mistakenly dismissed the case, the Second Circuit reversed and reinstated plaintiffs’ claims.

### *Hunter v. Berkshire Hathaway Inc.*, 829 F.3d 357 (5th Cir.)

Keller Rohrback represented retirement plan participants against Acme Brick Company and its sole owner, Berkshire Hathaway Inc., to enforce Berkshire Hathaway’s promise, when it acquired Acme, not to cause Acme to reduce retirement plan benefits. At Keller Rohrback’s urging, the Fifth Circuit determined that Berkshire Hathaway could be liable for that promise and reversed the trial court’s dismissal of claims against Berkshire Hathaway.

### *Rader v. Bruister*, 823 F.3d 250 (5th Cir.)

Keller Rohrback obtained a judgment for approximately \$6.5 million after a lengthy bench trial on ERISA breach of fiduciary duty and prohibited transaction claims. Defendants appealed the judgment, and the Fifth Circuit affirmed. The Fifth Circuit also affirmed the award of attorneys’ fees.

### *Alcantara v. Bakery & Confectionary Union*, 751 F.3d 71 (2d Cir.)

Keller Rohrback successfully defended the trial court’s decision and judgment that Defendants had unlawfully reduced pension benefits.

### *Wurtz v. Rawlings Co.*, 761 F.3d 232 (2d Cir.)

Keller Rohrback filed an amicus brief on behalf of the New York State Trial Lawyers Association, arguing that ERISA did not preempt a New York state law. The Second Circuit agreed with the position advanced by Keller Rohrback and adopted the reasoning and even some of the language of its amicus brief.

### *Gates v. UnitedHealth Group Inc.*, 561 F. App’x 73 (2d Cir.)

Keller Rohrback persuaded the Second Circuit to reverse the district court’s dismissal of our client’s claims for medical coverage.

### *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585 (8th Cir.)

Keller Rohrback represented a class of Wal-Mart employees who alleged that Wal-Mart’s 401(k) plan charged them excessive fees and convinced the Eighth Circuit to reverse the trial court and reinstate the employees’ claims.

# ERISA APPELLATE PRACTICE

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## *Johnson v. Couturier*, 572 F.3d 1067 (9th Cir.)

Keller Rohrback obtained a major victory for participants of an ESOP after Defendants awarded themselves grossly excessive compensation at the expense of the ESOP. On appeal, the Ninth Circuit affirmed a preliminary injunction by the district court which prohibited an ESOP plan sponsor from paying litigation costs to indemnify the ESOP's trustees. The opinion is frequently cited in ESOP litigation by courts across the country.

## *In re Syncor ERISA Litigation*, 516 F.3d 1095 (9th Cir.)

Keller Rohrback represented a group of workers who alleged that their employer had violated the law by investing their retirement savings in the employer's stock. Keller Rohrback convinced the Ninth Circuit to reverse the dismissal of the trial court and reinstate the workers' claims.

## *Tatum v. RJR Pension Investment Committee*, 392 F.3d 636 (4th Cir.) and 761 F.3d 346 (4th Cir.)

Attorney Jeff Lewis persuaded the Fourth Circuit to affirm the trial court's decisions that fiduciaries of the R.J. Reynolds 401(k) plan breached their fiduciary duties and that the breaching fiduciaries bore the burden of proof with respect to loss causation. Mr. Lewis further successfully persuaded the Fourth Circuit that the trial court applied an incorrect legal standard in concluding that the breach did not cause the plan's losses.



# KELLER ROHRBACK

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## LYNN LINCOLN SARKO

### CONTACT INFO

1201 Third Avenue, Suite 3200  
Seattle, WA 98101  
(206) 623-1900  
lsarko@kellerrohrback.com

### PRACTICE EMPHASIS

- Antitrust & Trade Regulation
- Appeals
- Class Actions
- Constitutional Law
- Commodities & Futures Contracts
- Consumer Protection
- Data Breach
- Employment Law
- Environmental Litigation
- Employee Benefits & Retirement Security
- Financial Products & Services
- Government & Municipalities
- Institutional Investors
- Intellectual Property
- International Law
- Mass Personal Injury
- Securities & Financial Fraud
- Whistleblower

**Lynn Lincoln Sarko is a master strategist and litigator who leads Keller Rohrbach's nationally-recognized Complex Litigation Group.** One of the nation's top attorneys in complex litigation, Lynn does not just help clients win—he helps them win what they want. Through smart, efficient strategy and tailored, creative problem solving, Lynn and his team accomplish the best outcomes while minimizing costs and maximizing value.

Lynn's diverse experience enables him to think outside the box to resolve complex cases. He regularly interacts with international business interests, representing sovereign nations and institutional clients seeking to recover investment losses caused by financial fraud and other malfeasance. He is currently involved in several matters involving complex derivatives and specialty investment products. Lynn is the driving force behind Keller Rohrbach's membership with the Sovereign Wealth Fund Institute, a global organization of leading asset managers and service providers engaged in the public investor community. He represents clients with regard to regulatory investigations and issues involving state and federal supervisory agencies and has litigated actions involving several of the nation's largest accounting and investment firms. Lynn is part of the team representing the City of Tacoma in its fight to hold opioid manufacturers accountable.

Lynn has led the firm's securities and retirement fund practice for over 25 years and regularly serves as lead counsel in multiparty individual and class action cases involving ERISA, antitrust, securities, breach of fiduciary duty and other investment fraud issues. Other law firms often hire him as settlement counsel in these and other complex cases because of his reputation as a skilled negotiator. His successes in this area include multimillion dollar settlements in the IKON, Anicom, United Companies Financial Corp., and the Enron, WorldCom, Global Crossing, Health South, Delphi, Washington Mutual, Countrywide, Lucent, Merrill Lynch, and Xerox consolidated pension and retirement plan cases.

In addition, Lynn was appointed to the Plaintiffs' Steering Committee for *In re Chrysler-Dodge-Jeep Ecodiesel Marketing, Sales Practices, and Products Liability Litigation*. Previously, Lynn served as one of the negotiators in the \$15 billion Volkswagen Diesel Emissions Fraud class action settlement for 2.0-liter vehicles, the largest auto-related consumer class action settlement in U.S. history, as well as the 3.0-liter settlement.

Courts and professional organizations have honored Lynn for his work on financial, fiduciary duty, consumer and numerous other high-profile public cases. After serving as trial counsel in the Exxon Valdez Oil Spill case, which resulted in a \$5 billion punitive damages verdict, Lynn was appointed by the court as Administrator for all funds recovered. He prosecuted the Microsoft civil antitrust case, Vitamin price-fixing cases, the MDL Fen/Phen Diet Drug Litigation, and notable public service lawsuits such as *Erickson v. Bartell Drug Co.*, which established a woman's right to prescription contraceptive health coverage.

Before joining Keller Rohrbach, Lynn was an Assistant United States Attorney

# KELLER ROHRBACK

L A W   O F F I C E S   ♦   L . L . P .

for the District of Columbia, Criminal Division, an associate at the Washington, D.C. office of Arnold & Porter, and law clerk to the Honorable Jerome Farris, United States Court of Appeals for the Ninth Circuit, in Seattle. He has been the managing partner of Keller Rohrbach since 1991.

Lynn appears in federal courts from coast to coast, maintaining an active national litigation practice. He counsels and represents consumers, employees and businesses who have suffered harm resulting from the improper disclosure of proprietary, personal, health and other protected information.

## EDUCATION

### University of Wisconsin

B.B.A., 1977

### University of Wisconsin

M.B.A., 1978, *Beta Alpha Psi*

### University of Wisconsin

J.D., 1981, *Order of the Coif*; Editor-in-Chief, *Wisconsin Law Review*; Salmon Dalberg Award (outstanding graduate)

## BAR & COURT ADMISSIONS

1981, Wisconsin

1981, U.S. Court of Appeals for the Ninth Circuit

1983, District of Columbia

1983, District of Columbia Appellate Court

1984, United States Supreme Court

1984, U.S. Court of Appeals for the Seventh Circuit

1984, U.S. Court of Appeals for the Fourth Circuit

1984, U.S. Court of Appeals for the Tenth Circuit

1985, U.S. Tax Court

1986, U.S. District Court for the Western District of Washington

1986, U.S. District Court for the Eastern District of Washington

1986, Washington

1986, U.S. Court of Appeals for the First Circuit

1988, U.S. District Court for the Eastern District of Wisconsin

1996, U.S. District Court for the Western District of Wisconsin

2001, U.S. Court of Appeals for the Third Circuit

2002, U.S. District Court for the Eastern District of Michigan

2003, U.S. Court of Appeals for the Fifth Circuit

2003, U.S. Court of Appeals for the Eleventh Circuit

2004, U.S. District Court for the Northern District of Illinois

2008, U.S. Court of Appeals for the Eighth Circuit

2009, U.S. Court of Appeals for the Sixth Circuit

2010, U.S. District Court for North Dakota

2013, U.S. Court of Appeals for the Second Circuit

2016, U.S. District Court for the Central District of Illinois

2016, U.S. District Court for the Southern District of Illinois

## HONORS & AWARDS

Listed as Lawdragon 500 Leading Lawyers in America 2018

Super Lawyers List, Washington Law & Politics

Avvo Top Tax Lawyer, Washington CEO Magazine

Trial Lawyer of the Year, Trial Lawyers for Public Justice

Salmon Dalberg Award



## PROFESSIONAL & CIVIC INVOLVEMENT

American Bar Association, *Member*

Bar Association of The District of Columbia, *Member*

Federal Bar Association, *Member*

King County Bar Association, *Member*

State Bar of Wisconsin, *Member*

Trial Lawyers for Public Justice, *Member*

Washington State Bar Association, *Member*

Washington State Trial Lawyers Association, *Member*

American Association for Justice, *Member*

Social Venture Partners of Santa Barbara, *Founding Partner*

The Association of Trial Lawyers of America, *Member*

American Academy of Trial Counsel, *Fellow*

Editorial Board, *Washington State Securities Law Deskbook*

## SELECTED PUBLICATIONS

Thomson/West Webinar, "Stock Drop and Roll: Key Supreme Court Rulings and New Standards in ERISA 'Stock Drop' Cases," July 24, 2014

14th Annual Pension Law, Governance and Solvency Conference, 2013

Canadian Institute's 14th Annual Advanced Forum on Pension Law, Governance and Solvency, 2013

ERISA Litigation & Regulatory Compliance Congress, 2013

American Conference Institute's 6th National Forum on ERISA Litigation, 2013

25th Annual ERISA Litigation Conference, 2012

American Conference Institute's 5th National Forum on ERISA Litigation, 2012



# KELLER ROHRBACK

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## LAURIE ASHTON

### CONTACT INFO

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1400

Phoenix, AZ 85012

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lashton@kellerrohrback.com

### PRACTICE EMPHASIS

- Business Reorganizations
- Class Action & Consumer Litigation
- Constitutional Law
- Employee Benefits and Retirement Security
- Fiduciary Breach
- International Law

### EDUCATION

**University of California, San Diego**

B.A., 1987, Economics

**Arizona State University College of Law**

J.D., 1990, Order of the Coif;  
*Member, Arizona State Law Journal,*  
1988-1990; Note and Comment  
Editor, *Arizona State Law Journal,*  
1989-1990; Student Instructor,  
Legal Research and Writing, 1989-  
1990.

**Laurie Ashton is Of Counsel to Keller Rohrback.** Prior to becoming Of Counsel, she was a partner in the Phoenix affiliate of Keller Rohrback. Early in her career, as an Adjunct Professor, she taught semester courses in Lawyering Theory and Practice and Advanced Business Reorganizations. She also served as a law clerk for the Honorable Charles G. Case, U.S. Bankruptcy Court, for the District of Arizona for two years.

In complex litigation, Laurie was the lead attorney for Keller Rohrback in a series of successful groundwater contamination suits brought in 1996 against multiple international defendants concerning chemical releases spanning over 60 years. She was also the lead attorney for Keller Rohrback in an ERISA class action suit on behalf of over 21,000 employees who lost a material percentage of their retirement assets at the hands of fiduciaries who maintained the investment of those assets in their own declining company stock—a case that was, at its time, amongst the largest of its kind in the nation. Laurie has led or been a member of the team leading numerous high profile business reorganizations, including a case in which the Court confirmed a reorganization plan over the objection of the international life insurance company's feasibility expert, based on Laurie's cross examination.

Laurie has been active in the State Bar of Arizona where she served on the Ethics Committee for six years. She was also the coauthor of a textbook on limited liability companies and partnerships, published by West, and is AV rated by Martindale.

An important part of Laurie's international work involves the domestic and international legal implications of treaty obligations and breaches. She is lead counsel for The Republic of the Marshall Islands in its federal court treaty breach suit against the United States, and a member of the international legal team representing the Marshall Islands in three cases pending at the International Court of Justice in The Hague, against the United Kingdom, India and Pakistan. For this work, Laurie is part of the legal team that the International Peace Bureau has nominated, along with the former Foreign Minister of the Marshall Islands, for the 2016 Nobel Peace Prize.

Laurie is frequently interviewed and has been cited by Reuters, Newsweek, Fox News, Huffington Post, Slate Magazine, Radio New Zealand, Radio Australia, and others. She currently serves as a Trustee of the Santa Barbara Foundation, a member of the Human Rights Watch Committee in Santa Barbara, and as a Director of the Global Justice Center in New York, which advances human rights pursuit to various international laws, including the Geneva and Genocide Conventions, as well as customary international law.

# KELLER ROHRBACK

L A W   O F F I C E S   ♦   L . L . P .

## BAR & COURT ADMISSIONS

1990, Arizona  
1999, Colorado  
2007, Washington, D.C.  
2013, Eastern District of Michigan  
U.S. Court of Appeals for the Sixth Circuit  
U.S. Court of Appeals for the Ninth Circuit  
U.S. Court of Appeals for the Tenth Circuit  
U.S. Supreme Court

## PROFESSIONAL & CIVIC INVOLVEMENT

State Bar of Arizona, *Member*  
Colorado Bar Association, *Member*  
Washington, D.C. Bar Association, *Member*  
Adjunct Professor of Law, *Advanced Chapter 11*, Arizona  
State University, 1996  
Adjunct Professor of Law, *Lawyering Theory & Practice*,  
Arizona State University, 1997  
Committee on the Rules of Professional Conduct ("Ethics  
Committee"), State Bar of Arizona, *Member*, 1997-2003  
Court Appointed Special Advocate, King County, 2007-2009  
Santa Barbara Foundation, *Trustee*  
Global Justice Center, New York, *Director*  
Human Rights Watch Committee, Santa Barbara, *Member*

## PUBLICATIONS & PRESENTATIONS

Author, Case Note, *Arizona Mortgage and Deed of Trust  
Anti-Deficiency Statutes: The Underlying Obligation on a Note  
Secured By Residential Real Property After Baker v. Gardner*,  
21 Ariz. St. L.J. 465, 470 (1989).

Co-Author, *Arizona Legal Forms: Limited Liability Companies  
and Partnerships* (1996-2004).

Guest Lecturer, Harvard Law School, 1997, 1999, 2001-  
2002.

Guest Lecturer, Stanford Law School, 2003.

Speaker, United Nations 2015 Review Conference of the  
Parties to the Treaty on the Non-Proliferation of Nuclear  
Weapons; Panel, *Marshall Islands Nuclear Zero Lawsuits*

Speaker, Humanity House, The Hague, "*Legal Obligations  
for Nuclear Disarmament*," March 2016.

Speaker, Bertha Von-Suttner Master Class, The Peace  
Palace, The Hague, "*Forward Into Light, The Barbarization of  
the Sky*."

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## ALISON GAFFNEY

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### PRACTICE EMPHASIS

- Class Actions
- Consumer & Data Privacy Protection
- Employee Benefits & Retirement Security

### EDUCATION

#### Swarthmore College

B.A., 2002, Linguistics and Languages (Spanish & Mandarin Chinese); McCabe Scholar

#### University of California, San Diego

M.A., 2007, Latin American Studies (International Migration)

#### University of Washington School of Law

J.D., 2012

**Alison Gaffney is a fighter. Once she takes on a client—as a member of Keller Rohrbach’s nationally recognized Complex Litigation Group or as a cooperating attorney with the ACLU—she commits to doing everything she can to fight for justice for her client.**

That tenacity was evident in her pursuit to reunite Somali refugee Joseph Doe with his family after their separation was prolonged because of the Muslim Travel Ban. Alison is a member of the team that sued the Trump Administration on behalf of Doe and other individuals and organizations harmed by the bans in *Doe, et al. v. Donald Trump, et al.* (W.D. Washington). Recently, she was honored to witness Doe’s joyous reunion with his wife and three sons in Seattle.

Alison is passionate about using litigation to combat complex world problems. At Keller Rohrbach, she is representing city and county governments, including King, Pierce, and Skagit counties, in their fight to hold prescription opioid manufacturers accountable for the devastating effects these drugs have had on their communities. Not only is Alison committed to stopping the spread of addiction, but she’s also fighting to make sure that local governments get all the resources they need to provide their citizens recovering from opioid addiction a meaningful second chance.

Alison is a thorough researcher who leaves no stone unturned when investigating possible outcomes for the employees and consumers she represents in a variety of claims. She litigated both individual and class action claims on behalf of consumers harmed by drug manufacturer Eli Lilly’s failure to accurately represent the risk of severe withdrawal from the drug Cymbalta, and she is currently fighting to help patients who’ve suffered an amputation after taking the prescription drug Invokana. Alison also represents a proposed class of employees alleging ERISA violations in *Dolins v. Continental Casualty Company* (N.D. Illinois) and a proposed class of consumers with defective smartphones in *Kessler v. Samsung Electronics America, Inc.* (E.D. Wisconsin). She connects with her clients as people, not case numbers.

Both before and during law school, Alison’s passion for justice and human rights drew her to immigration law and policy. She completed a master’s degree focused on international migration, and as a law student, she interned with the Seattle Immigration Court and the Northwest Immigrant Rights Project (NWIRP) in Tacoma, where she gave “Know Your Rights” presentations at the Northwest Detention Center. She represented clients in deportation proceedings through NWIRP as well as the law school’s Immigration Law Clinic, and she continues to volunteer as a pro bono attorney for NWIRP.

When she is not fighting for her clients, Alison is busy keeping up with her two young sons, scrambling with The Mountaineers, and generally enjoying the beauty of the Pacific Northwest.

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L A W   O F F I C E S   ♦   L . L . P .

## BAR & COURT ADMISSIONS

2012, Washington

2013, U.S. District Court for the Western District of Washington

2015, U.S. District Court for the Eastern District of Washington

2016, U.S. District Court for the Central District of Illinois

2013, U.S. Court of Appeals for the Second Circuit

2014, U.S. Court of Appeals for the Ninth Circuit

2016, U.S. District Court for the Eastern District of Wisconsin

## PROFESSIONAL & CIVIC INVOLVEMENT

ACLU Cooperating Attorney

Washington State Bar Association, *Member*

King County Bar Association, *Member*

Mother Attorneys Mentoring Association of Seattle (MAMAS), *Member*

Northwest Immigrant Rights Project, *Pro Bono Attorney*

## LANGUAGES

Spanish

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## LAURA R. GERBER

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### PRACTICE EMPHASIS

- Consumer Protection
- Employee Benefits & Retirement Security
- Fiduciary Breach
- Financial Products & Services
- Institutional Investors
- Whistleblower

### EDUCATION

#### Goshen College

B.A., 1994, History, Economics

#### University of Washington School of Law

J.D., 2003

#### Evans School of Public Affairs, University of Washington

M.P.A., 2003

**Laura R. Gerber is a strong advocate for her clients.** From her early years in a whistleblower protection organization, to her current practice litigating against some of America's largest corporations, Laura has built her career as an advocate on behalf of both employees and customers of large corporations. Laura represents her clients with skill, tact and diplomacy. As a result, Laura's clients trust her to listen carefully, keep them informed, provide excellent legal advice, and to diligently pursue their interests in litigation against powerful defendants.

For over a decade, Laura has practiced in Keller Rohrback's Complex Litigation Group where she has developed a diverse practice with a focus on holding banks and other institutions accountable to their customers and employees. She has experience litigating mutual fund excessive fee cases, Ponzi scheme cases, breach of contract and breach of fiduciary duty cases, Employee Retirement Income Security Act ("ERISA") cases, and consumer protection class actions. Laura's strategic persistence in complex cases has led to impressive results with certain of her clients receiving substantial individual recoveries.

While in law school, Laura concurrently received a Master's degree in Public Administration and was a member of the Moot Court Honor Board.

### BAR & COURT ADMISSIONS

2004, Washington

2006, U.S. District Court for the Eastern District of Washington

2006, U.S. District Court for the Western District of Washington

2010, U.S. District Court for the Northern District of Illinois

2013, U.S. District Court for the District of Colorado

2016, U.S. District Court for the Southern District of Illinois

2016, U.S. District Court for the Eastern District of Missouri

2016, U.S. District Court for the Northern District of Ohio

2016, U.S. District Court for the Western District of Oklahoma

2006, U.S. Court of Appeals for the Ninth Circuit Court

2014, U.S. Court of Appeals for the Sixth Circuit Court

2015, U.S. Court of Appeals for the Tenth Circuit Court

### HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers - Washington*, 2009, 2013.





## PROFESSIONAL & CIVIC INVOLVEMENT

Washington Appleseed, Board of Directors, *2012-present*

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

Mother Attorney Mentoring Association (MAMAS), *Member*

## PUBLICATIONS & PRESENTATIONS

Speaker, American Conference Institute's 8th National Forum on ERISA Litigation, October 2014, (New Trends in Church Plan Litigation).

L. Gerber and R. Giovarelli, *Land Reform and Land Markets in Eastern Europe*, Food and Agriculture Organization of the United Nations (2005).

David Weissbrodt, Penny Parker, Laura Gerber, Muria Kruger, Joe W. (Chip) Pitts III, *A Review of the Fifty-Fourth Session of the Sub-Commission on the Promotion and Protection of Human Rights*, 21 NETH Q. HUM. RTS. 291 (2003)

# KELLER ROHRBACK

LAW OFFICES ♦ L.L.P.



## MATTHEW GEREND

### CONTACT INFO

1201 Third Avenue, Suite 3200  
Seattle, WA 98101  
(206) 623-1900  
mgerend@kellerrohrback.com

### PRACTICE EMPHASIS

- Class Action
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Securities

### EDUCATION

#### University of Wisconsin

B.A., with distinction, 2005,  
Political Science, Phi Beta Kappa

#### Georgetown University Law Center

J.D., *cum laude*, 2010; Executive  
Articles Editor, *Georgetown Journal  
on Poverty Law and Policy*

**Matthew Gerend practices in the firm's nationally recognized Complex Litigation Group**, representing employees and other investors in litigation to enforce securities laws and the Employee Income Retirement Security Act ("ERISA"). Matt has represented plaintiffs in federal courts across the country to redress harms stemming from breaches of fiduciary duties, investment fraud, and other misconduct that threatens employees' retirement security.

Matt became interested in the laws protecting retirement and pension benefits as a clerk with AARP Foundation Litigation, where he helped draft a number of amicus curiae briefs filed in the U.S. Supreme Court and U.S. Courts of Appeals regarding the proper interpretation and implementation of ERISA. During law school, Matt also worked as an intern with the Community Development Project at the Lawyers' Committee for Civil Rights Under Law. Matt believes that lawyers have a unique ability to effect social change, an ethic that has guided his work representing individuals and investors against those engaged in divisive and fraudulent practices.

### BAR & COURT ADMISSIONS

2010, Washington  
2011, U.S. District Court for the Western District of Washington  
2012, U.S. Court of Appeals for the Third Circuit  
2013, U.S. District Court for the Eastern District of Michigan  
2014, U.S. Court of Appeals for the Sixth Circuit  
2014, U.S. Court of Appeals for the Ninth Circuit  
2015, U.S. Court of Appeals for the Seventh Circuit  
2015, U.S. District Court for the District of Colorado

### PROFESSIONAL & CIVIC INVOLVEMENT

Washington State Bar Association, *Member*

### HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers – Washington*, 2014-2017

### PUBLICATIONS & PRESENTATIONS

Contributing Author, *Zanglein et. al., ERISA Litigation* (Bloomberg BNA 2015).  
Deborah M. Austin and Matthew M. Gerend, *The Scope and Potential of Section 3 as Currently Implemented*, 19 J. Affordable Housing & Commun. Dev. L. 89 (2009).

# KELLER ROHRBACK

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## CHRISTOPHER GRAVER

### CONTACT INFO

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### PRACTICE EMPHASIS

- Business Litigation
- Bankruptcy and Creditors' Rights

### EDUCATION

#### St. John's College

B.A., 1976

#### University of New Mexico

J.D., *magna cum laude*, 1990  
Order of the Coif

### Chris is a member of Keller Rohrback's Complex Litigation and Bankruptcy Groups,

representing debtors, creditors, Court-appointed committees, and asset purchasers in Chapter 11 reorganization proceedings and out-of-court workouts. Chris also has wide-ranging experience in complex commercial litigation from corporate restructuring to matters of breach of fiduciary duty, commercial bankruptcy, commercial real estate, contracts, patent infringement, and environmental insurance coverage.

Together with colleagues he has represented clients as diverse as the committee of victims of clergy sexual abuse in the Chapter 11 reorganization of a Catholic diocese, a developer restructuring a portfolio of real property interests nationwide, and a national company acquiring a competitor's assets in a bankruptcy-court-approved sale in California.

A graduate of the great books liberal arts program at St. Johns' College in Santa Fe, Chris earned his law degree from the University of New Mexico Law School *magna cum laude* in 1990. While his practice is centered in the Southwest, Chris represents clients in federal courts coast to coast.

### BAR & COURT ADMISSIONS

Arizona, 1990

United States District Court for the District of Arizona, 1990

United States Bankruptcy Appellate Panel of the Ninth Circuit

United States Court of Appeals for the Ninth Circuit

### PROFESSIONAL & CIVIC INVOLVEMENT

American Bankruptcy Institute, *Member*

Arizona State Bar Association, *Member*

Maricopa County Bar Association, *Member*

### PUBLICATIONS & PRESENTATIONS

"Confirming the Catholics: The Diocese of Tucson Experience, Norton Bankruptcy Law Advisor," 2005.

"Representing the Tort Claimants' Committee in the Chapter 11 Case Filed by the Roman Catholic Diocese of Tucson, prepared for the National Conference of Bankruptcy Judges," 2005.

"Decoding the Code," *AzBusiness Magazine*, 2005.

Speaker, Maricopa County Bar Association presentation, *New Bankruptcy Code: Changing the Way Creditors are Treated*, 2006.

# KELLER ROHRBACK

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## RON KILGARD

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### PRACTICE EMPHASIS

- Appeals
- Antitrust & Trade Regulation
- Class Action
- Constitutional Law
- Employee Benefits & Retirement Security
- Fiduciary Breach
- Financial Products & Services

### EDUCATION

**Harvard College** B.A., 1973,  
History

**Harvard Divinity School** M.T.S.,  
1975, Old Testament

**Arizona State University College  
of Law** J.D., 1979, Editor-in  
Chief, *Arizona State Law Journal*,  
Armstrong Award (outstanding  
graduate)

**Ron Kilgard is a seasoned lawyer who understands that yesterday's rule changes are just as important as the landmark cases decided decades ago.** Ron has 35 years of experience in civil litigation. He knows that the substantive law changes slowly (at least most of the time!). However, the relevant rules and judges' individual practices change almost daily, and they vary enormously from jurisdiction to jurisdiction and judge to judge. Balancing all of this is, for Ron, one of the many challenges and pleasures of law practice.

Ron's practice is focused primarily on commercial and financial matters. For the last 17 years, he has extensively litigated pension plan class actions, involving both plans regulated by the Employee Retirement Income Security Act ("ERISA") and non-ERISA plans such as public plans and so-called "church plans." Ron helped Keller Rohrback pioneer company stock ERISA litigation in the late 1990s and early 2000s, and he was part of the team that obtained settlements of over \$265 million (in cash) in the Enron 401(k) litigation. In 2017, after six years of litigation, Ron prevailed in an action challenging as unconstitutional the cutbacks to the pensions of Arizona state court judges.

Ron is a Phoenix native. He clerked for the Honorable Mary M. Schroeder, U. S. Court of Appeals for the Ninth Circuit, in 1979-80 and has practiced in Phoenix ever since. He was one of the lawyers who formed the Phoenix affiliate of Keller Rohrback L.L.P. in November 2002. When not practicing law, he enjoys reading on the porch of his 1915 house with his Golden Retriever.

### HONORS & AWARDS

Best Lawyers in America, 2017, ERISA practice.

### PROFESSIONAL & CIVIC INVOLVEMENT

State Bar of Arizona, *Member*

District of Columbia Bar, *Member*

New York State Bar Association, *Member*

National Immigrant Justice Center, *Pro Bono Counsel*

# KELLER ROHRBACK

L A W   O F F I C E S   ♦   L . L . P .

## BAR & COURT ADMISSIONS

1979, Arizona Supreme Court  
1979, U.S. District Court for the District of Arizona  
1982, U.S. Court of Appeals for the Ninth Circuit  
1995, U.S. Supreme Court  
2005, U.S. Court of Appeals for the Second Circuit  
2005, U.S. Court of Appeals for the Fifth Circuit  
2007, U.S. District Court for the Eastern District of Michigan  
2009, District of Columbia Court of Appeals  
2010, U.S. Court of Appeals for the Fourth Circuit  
2010, U.S. District Court for the District of North Dakota  
2011, New York Supreme Court, Appellate Division  
2012, U.S. District Court for the Southern District of New York  
2013, U.S. District Court for the District of Colorado  
2013, U.S. Court of Appeals for the Eighth Circuit  
2014, U.S. Court of Appeals for the Sixth Circuit  
2014, U.S. Court of Appeals for the Third Circuit  
2015, U.S. Court of Appeals for the Seventh Circuit  
2015, U.S. Court of Appeals for the Tenth Circuit  
2016, U.S. District Court for the Southern District of Illinois  
2016, U.S. District Court for the Western District of Oklahoma  
2016, U.S. District Court for the Eastern District of Missouri  
2016, U.S. District Court of the Central District of Illinois  
2016, U.S. District Court of the Northern District of Indiana

## PUBLICATIONS & PRESENTATIONS

Speaker, ABA Seminar, After Enron, 2006  
Speaker, Chicago Bar Association, Company Stock Litigation, 2006  
Speaker, West LegalWorks ERISA Litigation Conference, 2007  
Speaker, National Center for Employee Ownership, *Fiduciary Implications of Company Stock Lawsuits*, 2012 and 2013  
Speaker, American Conference Institute, *New Developments in Church Plan Litigation*, 2015-2017

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## HAVILA C. UNREIN

### CONTACT INFO

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Seattle, WA 98101  
(206) 623-1900  
hunrein@kellerrohrback.com

### PRACTICE EMPHASIS

- Class Actions
- Consumer Protection
- Employee Benefits and Retirement Security
- Environmental Contamination
- Fiduciary Breach
- Financial Products and Services
- Mass Personal Injury
- Securities
- Whistleblower

### EDUCATION

#### Dartmouth College

B.A., *magna cum laude*, 2003,  
Russian Area Studies

#### University of Washington School of Law

J.D./LL.M. (Tax), *with honors*, 2008

**Havila Unrein gives her clients a voice in the legal system.** Havila practices in Keller Rohrback's nationally recognized Complex Litigation Group, where she is dedicated to helping clients who have been harmed by others engaged in fraud, cutting corners, and abuses of power.

Havila made significant contributions to *Hartman et al. v. Ivy Asset Management et al.*, a case involving fiduciary breach related to Madoff investments that resulted in a \$219 million settlement with consolidated cases. She currently represents plaintiffs in multiple cases alleging violations of the Employee Retirement Income Security Act of 1974 ("ERISA") by healthcare institutions attempting to claim exempt "church plan" status under ERISA.

During law school, Havila provided tax and business advice to low-income entrepreneurs and high-tech start-ups as a student in the Entrepreneurial Law Clinic. She also served as an extern to the Honorable Stephanie Joannides of the Anchorage Superior Court. Prior to law school, Havila worked and studied abroad in Russia, Azerbaijan, and the Czech Republic.

### BAR & COURT ADMISSIONS

2008, Washington

2009, U.S. District Court for the Western District of Washington

2012, Montana

2012, U.S. Court of Appeals for the Ninth Circuit

2012, U.S. District Court for the District of Montana

2013, California

2013, U.S. District Court for the District of Colorado

2013, U.S. District Court for the Central District of California

2013, U.S. District Court for the Eastern District of California

2013, U.S. District Court for the Northern District of California

2013, U.S. District Court for the Southern District of California

2014, U.S. Court of Appeals for the Sixth Circuit

### PROFESSIONAL & CIVIC INVOLVEMENT

California State Bar Association, *Member*

Santa Barbara County Bar Association, *Member*

Washington State Bar Association, *Member*

King County Bar Association, *Member*

Montana State Bar Association, *Member*

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